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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-1532

ALYESKA PIPELINE SERVICE COMPANY,
AMERADA HESS PIPELINE CORPORATION,
ARCO PIPE LINE COMPANY,
BP PIPELINES INC.,
EXXON PIPELINE COMPANY,
MOBIL ALASKA PIPELINE COMPANY,
PHILLIPS ALASKA PIPELINE CORPORATION,
SOHIO PIPE LINE COMPANY, and
UNION ALASKA PIPELINE COMPANY,
Petitioners,

v.

THE UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

PETITIONERS' REPLY BRIEF

QUINN O'CONNELL*
ERNEST C. BAYNARD, III
CONNOLE AND O'CONNELL
One Farragut Square South
Washington, D.C. 20006
(202) 347-8300

HARRY G. BRELSFORD
ALFRED T. SMITH
ALYESKA PIPELINE SERVICE COMPANY
1835 South Bragaw Street
Anchorage, Alaska 99512
(907) 265-8221

**Counsel of Record*

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In the Brief of the United States in Opposition, Respondent raises several arguments for the first time. This reply brief addresses those arguments.

1. Respondent attempts to characterize this case as just another case that holds "if the claimant, before filing its first suit, is in possession of all of the facts on which its second suit is based, the splitting of the claims into multiple suits is fatal to the maintenance of the later-filed action." Brief in Opposition at 9. Here there were not multiple lawsuits, but only one lawsuit.

2. Petitioners amended their pleadings so as to include all of their claims in one lawsuit. This is the procedure the Court of Claims had held to be the proper method to avoid splitting a cause of action. Respondent argues that in all of the Court of Claims cases cited by Petitioners holding this to be the proper procedure, the pleadings were amended "*prior* to entry of judgment on the initial claim." (Emphasis in original.) Opposition Brief at 10, n. 12. This is a subtle misstatement. At the time those cases were decided, the statute involved in this case, 28 U.S.C. § 2517(b), had not yet been amended to authorize the Court of Claims to enter judgments on fewer than all of the claims presented in one lawsuit. Hence, prior to the amendment of § 2517(b) in 1978, there could not have been separate judgments at different times on separate claims within one lawsuit.

The only relevant difference between the line of cases cited by Petitioners and this case is that 28 U.S.C. § 2517(b) has now been amended to authorize the entry and payment of judgments on fewer than all of the claims in one lawsuit. Such a partial final judgment was entered in this case pursuant to the amended § 2517(b). Yet, subsequently, in acting upon a separate claim, the court below ignored that portion of the statute that prevents claims not described in the partial final judgment from being discharged.

3. Respondent appears to argue that 28 U.S.C. § 2517(b) really was applied here, but that this case falls within an exception to the saving clause of that statute. Opposition Brief at 8. There are no exceptions to the saving clause of the statute, unless this case has created one.

4. Respondent suggests that the decision below is consistent with *Arizona v. California*, No. 8 Orig. (March 30, 1983). This Court found in that case that the technical rules of preclusion or *res judicata* are not applicable in the course of the same proceeding. 51 U.S.L.W. 4325, 4329. Yet, it was the technical rules of preclusion that the court below invoked to bar Petitioners' claim as a result of an earlier partial final judgment in the same case. Thus, to the extent it is applicable at all, *Arizona v. California* is inconsistent with the decision below.

5. As is evident from the Petition for a Writ of Certiorari and the Brief of the United States in Opposition, this case presents significant, unanswered questions concerning both the scope and meaning of 28 U.S.C. § 2517(b), as amended in 1978. With the state of the law as it is now, a litigant who obtains a partial final judgment in the United States Claims Court does so at his peril. At some point this Court will have to answer the questions of first impression this case presents concerning the partial final judgment authority of the United States Claims Court. It would clearly be in the best interests of litigants in the United States Claims Court if those questions were answered now.

Respectfully submitted,

QUINN O'CONNELL*
ERNEST C. BAYNARD, III
CONNOLE AND O'CONNELL
One Farragut Square South
Washington, D.C. 20006
(202) 347-8300

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